NC: 2025:KHC-K:1188
CRL.P No. 201479 of 2024

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 20TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

CRIMINAL PETITION NO. 201479 OF 2024

BETWEEN:

SADIQ S/O MAIBOOBSAB BHAGAWAN,
AGE: 42 YEARS, OCC: BUSINESS,
R/O. NAVBAGH VIJAYAPURA-586 101,

…PETITIONER

(BY SRI R.S. LAGALI, ADV.)

AND:

1. THE STATE OF KARNATAKA,
   THROUGH THE SHO. APMC PS., VIJAYAPURA,
   REP. BY THE ADDL. STATE PUBLIC PROSECUTOR,
   HIGH COURT OF KARNATAKA,
   KALABURAGI-585 102.
2. DEVARAJ S. ULLAGADDI,
   AGE: MAJOR, OCC: PSI (L AND O),
   APMC PS., VIJAYAPURA-586 103.

…RESPONDENTS

(BY SMT. MAYA T.R., HCGP, FOR R1 AND R2)

Digitally signed by SHIVAKUMAR HIREMATH
Location: HIGH COURT OF KARNATAKA

THIS CRL.P IS FILED U/S.482 OF CR.P.C.(OLD) U/SEC 528 OF BNSS, PRAYING TO, A) ALLOW THIS CRIMINAL PETITION AND THEREBY QUASH ORDER OF TAKING COGINZANCE AND ISSUE OF PROCESS DT. 12.03.2024 PASSED BY THE HON'BLE I ADDL. SENIOR CIVIL JUDGE AND CJM COURT, VIJAYAPURA IN CRIMINAL CASE NO. 690/2024

FOR THE OFFENCES PUNISHABLE U/SEC 98 OF KARNATAKA POLICE ACT AGAINST HIM, PRODUCED AT ANNEXURE-A.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

ORAL ORDER

(PER: HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY)

1. Petitioner is before this Court under Section 528 of BNSS, 2023, with a prayer to quash the entire proceedings in C.C.No.690/2024 pending before the Court of I Addl. Senior Civil Judge & CJM, Vijayapura, arising out of Crime No.18/2023 registered by APMC Police Station, Vijayapura, for the offence punishable under Section 98 of the Karnataka Police Act, 1963 (for short, 'the Act').

2. Heard the learned Counsel for the parties.

3. Learned Counsel for the petitioner submits that FIR was registered in the present case for the offence punishable under Section 98 of the Act and since the said offence is a non-cognizable offence, compliance of Section 155(2) of Cr.PC becomes mandatory. He submits that after investigation,

charge sheet has been filed for the aforesaid offence and the Trial Court without properly applying its mind, has taken cognizance of the charge sheeted offence. Accordingly, he prays to allow the petition.

4. Per contra, learned HCGP has opposed the petition. She submits that the police after obtaining permission under Section 155(2) of Cr.PC have registered the FIR in the present case, and thereafter continued the investigation and filed the charge sheet against the petitioner for the alleged offence. Therefore, there is compliance of Section 155(2) of Cr.PC in the present case. Accordingly, she prays to dismiss the petition.

5. Perusal of the material on record would go to show that the first information was registered in the present case against the petitioner for a non-cognizable offence. Therefore, compliance of Section 155(2) of Cr.PC becomes mandatory. Section 155(2) of Cr.PC reads as under:

> "Section 155(2) - No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial."

6. In the present case, FIR in Crime No.18/2023 was registered based on the first information dated 24.03.2023 received from the Sub-Inspector of Police, APMC Police Station, Vijayapura. Perusal of the first information would go to show that on 24.03.2023 when the vehicle bearing registration No.KA-28-L-6242 was inspected near the check-post, it was found that in the said vehicle, the petitioner was carrying totally a sum of Rs.15,25,810/-. Since the petitioner had failed to offer proper explanation for the amount carried by him, the said amount was seized under a mahazar, and thereafter, the first information was submitted to the police.

7. Perusal of the order sheet of the Trial Court would go to show that after receipt of the first information, the Station House Officer of APMC Police Station, Vijayapura, had submitted a requisition seeking permission under Section 155(2) of Cr.PC., to investigate the case and register the FIR. Thereafter, the jurisdictional Magistrate has granted the permission as provided under Section 155(2) of Cr.PC. The word 'investigation', has been defined in Section 2(h) of Cr.PC, which reads as under:

> "2(h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf."

8. From a reading of Section 155(2) of Cr.PC, it is very clear that no police officer shall investigate a non-cognizable case without the order of the Magistrate having power to try such cases by committing the accused for trial. Since the amount which the petitioner was carrying with him on the alleged date of incident was already recovered under a panchanama, it is very clear that investigation had already commenced even before obtaining permission as provided under Section 155(2) of Cr.PC. The panchanama under which the amount was recovered is part of the charge sheet, and therefore, it is apparent that investigation in the present case had commenced even before the permission under Section 155(2) of Cr.PC was granted. Therefore, I am of the opinion that entire investigation in the present case gets vitiated and the impugned criminal proceedings, if allowed to continue, the same would amount to abuse of process of law. Accordingly, the following order:

9. Petition is allowed. The entire proceedings in C.C.No.690/2024 pending before the Court of I Addl. Senior Civil Judge & CJM, Vijayapura, arising out of Crime No.18/2023 registered by APMC Police Station, Vijayapura, for the offence punishable under Section 98 of the Karnataka Police Act, 1963, is hereby quashed.

Sd/-
(S.VISHWAJITH SHETTY)
JUDGE

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